

EXHIBIT 83

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 NORFOLK DIVISION

4 CSX TRANSPORTATION, INC.,)
5 Individually and on behalf)
6 of NORFOLK & PORTSMOUTH)
7 BELT LINE RAILROAD)
8 COMPANY,)
9)
10 Plaintiff,)
11))
12 V.) NO. 2:18cv530
13))
14 NORFOLK SOUTHERN RAILWAY)
15 COMPANY, NORFOLK &)
16 PORTSMOUTH BELT LINE)
17 RAILROAD COMPANY, JERRY)
18 HALL, THOMAS HURLBUT,)
19 PHILIP MERILLI and CANNON)
20 MOSS,)
21))
22 Defendants.)

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16
17 CONFIDENTIAL

18 DEPOSITION UPON ORAL EXAMINATION OF

19 DONNA COLEMAN

20 TAKEN ON BEHALF OF THE PLAINTIFF

21 Norfolk, Virginia

22 Wednesday, March 4, 2020

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1 A I helped Mr. Moss with the drafting of it
2 and it was presented to our board.

3 Q When you say "the drafting," was the
4 present conflict of interest policy for the Belt Line,
5 to your knowledge, entirely composed by Mr. Moss and
6 you and anyone else at the Belt Line or was it adopted
7 or borrowed from Norfolk Southern?

8 A I think -- he did most of it, so I don't
9 know what his source was.

10 Q Do you have any information as to what
11 the source of it was?

12 A I don't believe so.

13 Q Was your role more of reviewing what was
14 drafted and editing it or adding to it or were you the
15 draftsman of any past conflict of interest policy?

16 A I think I was just mostly editing.

17 Q Do you know if the Belt Line presently
18 has a code of ethics?

19 A We do.

20 Q Was that in existence when you came on
21 the board in 2006?

22 A No. It came about about the same time as
23 the conflict of interest.

24 Q Do you know why the code of ethics and
25 the conflict of interest were -- came into being for

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1 the Belt Line?

2 A CSX did an audit. My understanding was
3 they were looking at many shortlines that they had an
4 interest in, and that was one of the things they were
5 looking at was looking for conflicts of interest,
6 ethics, that sort of thing.

7 Q You mentioned an audit you say was
8 conducted by CSX.

9 A I believe CSX did most of the work on
10 that one.

11 Q Do you know, was there ever a joint audit
12 that was conducted by both NS and CSX?

13 A The audits I'm aware of, usually one
14 railroad would take the lead and the other one was
15 informed.

16 Q Are you aware of more than one audit then
17 during your tenure with the Belt Line?

18 A There was a financial audit I believe in
19 '07 at my request.

20 Q Why did you request a financial audit in
21 '07?

22 A We had converted our financials over to
23 Norfolk Southern's systems at that point, which involve
24 some change in accounting practices, and I was the new
25 comptroller and I thought it was a good idea to have

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1 based on the type of contract.

2 Q Is there then a subject matter limitation
3 in terms of what types of contracts the Belt Line can
4 enter into without board approval?

5 A Not as in a single policy where it's
6 clearly written out.

7 Q I take it there are some contracts that
8 affect the Belt Line which the shareholders approve?

9 A Yes.

10 Q From your knowledge, who votes on or who
11 decides items involving rates and tariffs? Is it the
12 board of directors or the shareholders who ultimately
13 vote on those, if you know?

14 A I believe and historically it has been
15 the board.

16 (Coleman Exhibit Number 2 marked.)

17 BY MR. MFARLAND:

18 Q Looking at the email chain, ma'am, that
19 we've marked as Coleman Deposition Exhibit 2, you do
20 not appear to be a direct cc of these emails, but are
21 you familiar with the subject matter that's discussed
22 in them?

23 A Yeah. Vaguely, yeah.

24 Q Who is Miss Mary Bess Smith?

25 A She is high up in the audit group. I

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1 Q Do you know if CSX had an interest in
2 purchasing this same property?

3 A Well, there's a letter here that says
4 they did.

5 Q Do you recall if CSX's interest in
6 purchasing the property was discussed at the board
7 meeting?

8 A I don't recall.

9 Q Do you know if the sale of this property,
10 the Port Norfolk yard property, was discussed at the
11 April 2008 board meeting?

12 A I don't recall.

13 Q Do you know if there ultimately was a
14 sale by the Belt Line of the property known as the
15 Port Norfolk yard?

16 A No, there was not.

17 Q Do you know if in addition to the letter
18 we see here from CSX about its interest in purchasing
19 the Port Norfolk yard property -- and that's dated
20 April 1st, 2008 -- were there any further offers or
21 communications from CSX about purchasing that property?

22 A I don't recall.

23 (Coleman Exhibit Number 8 marked.)

24 BY MR. MFARLAND:

25 Q In your capacity as comptroller and

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1 commitment, though?

2 A I don't remember that it did.

3 It wasn't for us to bring traffic to
4 them.

5 Q Do you know, was a purchase and sale
6 agreement ever entered into for this property with any
7 other party?

8 A We entered into some type of an agreement
9 with a company called Ice Express, and they were going
10 to build a rail-served warehouse on a part of the
11 property. It wasn't for the whole property, I don't
12 believe, and that eventually fell through.

13 Q You note when you are communicating with
14 Mr. James that you thought the CSX offer was way low,
15 right?

16 A I thought so, yes.

17 Q What did you base that on?

18 A The earlier evaluations that had been
19 done, the earlier appraisals that had been done of the
20 property.

21 Q After 2009, do you recall if there was
22 any further interest by the Port Authority in
23 purchasing this property?

24 A I don't remember anything.

25 (Coleman Exhibit Number 10 marked.)

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1 how do they phrase this? Is there something more up to
2 date that we should be using? Were we missing anything
3 that should be built into our tariff?

4 Q How about in terms of the tariff charged
5 itself, do you know, did you look at comparisons of --

6 A We may have looked at them, but at the
7 end of the day, it is -- our tariff is based on what it
8 costs us to move the car.

9 Q Could the cost to move the car go down if
10 the number of cars moved went up?

11 A It depends on how the number of cars are
12 presented.

13 A unit train costs less, usually, than
14 cars that come in in smaller numbers on a local train,
15 but you also have to have a facility that can
16 accommodate the unit train or your costs go up because
17 now you are storing cars and having to do extra
18 switching.

19 Q As of 2018, did the Belt Line have the
20 capacity to store cars for longer trains?

21 A Define "longer."

22 Q I'm using the term that you used.

23 So how would you define it?

24 A In 2018 we were getting 90-car unit
25 trains and, yes, we could handle those, and we did.